

Andrew E. Monach (CA SBN 87891)  
amonach@mofo.com  
 Nicholas S. Napolitan, (CA SBN 251762)  
nnapolitan@mofo.com  
 MORRISON & FOERSTER LLP  
 425 Market Street  
 San Francisco, CA 94105  
 Telephone: 415-268-7000  
 Facsimile: 415-268-7522

Attorneys for Defendant  
 Sheet Metal and Air Conditioning  
 Contractors' National Association, Inc.

**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA**

PUBLIC.RESOURCE.ORG

Plaintiff,

vs.

SHEET METAL AND AIR  
 CONDITIONING CONTRACTORS'  
 NATIONAL ASSOCIATION, INC.

Defendant.

Case No. cv-13-0815 (SC)

**DECLARATION OF VINCENT R.  
 SANDUSKY IN SUPPORT OF  
 PARTIAL OPPOSITION TO  
 PLAINTIFF'S MOTION FOR  
 DEFAULT JUDGMENT AND IN  
 OPPOSITION TO REQUEST FOR  
 ATTORNEYS' FEES**

I, Vincent R. Sandusky, declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am the Chief Executive Officer of the Sheet Metal & Air  
 Conditioning Contractors' National Association (SMACNA).

2. SMACNA is a non-profit, international association of sheet metal  
 contractors that develops and publishes technical standards, safety guidelines and

1 manuals for its members, and provides labor-management relations services,  
2 business management education, public policy advocacy and industry promotion  
3 activities.

4  
5 3. SMACNA customarily files for copyrights on its published materials  
6 with the United States Copyright Office. SMACNA receives revenue from selling  
7 these copyrighted materials. In keeping with this practice, SMACNA obtained a  
8 registered copyright in its 1985 HVAC Air Duct Leakage Test Manual (hereafter,  
9 the "Disputed Copyrighted Publication") and sold copies of that publication to its  
10 members and to the general public. The Disputed Copyrighted Publication bore a  
11 copyright notice and a notice that it could not be reproduced in any form without  
12 the prior written permission of the publisher. SMACNA no longer sells the  
13 Disputed Copyrighted Publication, because it has been superseded by other  
14 publications.  
15

16  
17 4. While SMACNA has proven itself as an industry-leading authority in  
18 heating, ventilation, and air conditioning technical and safety matters, SMACNA  
19 does not publish its materials with the exclusive or primary goal that any legislative  
20 or regulatory body incorporate the materials into the law.  
21

22  
23 5. As a non-profit organization, SMACNA seeks to safeguard its assets,  
24 serve its members, and mitigate unnecessary business expenses that undermine its  
25 mission. For example, SMACNA seeks to protect its copyrighted publications  
26 because SMACNA understands that infringement of its material(s) adversely affects  
27

1 SMACNA's revenue stream and sustained viability. However, SMACNA's  
2 protection of its copyrights does not overshadow SMACNA's focus on its core  
3 mission to its members.

4 6. SMACNA must make difficult decisions based on its limited  
5 resources. In this case, Plaintiff apparently is a well-funded organization with a  
6 principal and attorneys intent on pursuing public policy change via litigation. The  
7 article from Bloomberg Businessweek attached hereto as Exhibit A summarizes my  
8 current understanding of plaintiff and its goals and tactics.

9 [http://www.businessweek.com/articles/2012-04-12/one-mans-quest-to-make-  
11 information-free](http://www.businessweek.com/articles/2012-04-12/one-mans-quest-to-make-<br/>10 information-free) When Plaintiff filed its lawsuit for declaratory relief, SMACNA  
12 found itself in a no-win situation. It could protect its copyright in an outdated  
13 publication by expending hundreds of thousands of dollars against opponents with  
14 enormous resources, or simply default.

15 7. SMACNA decided that while it vehemently disagrees with Plaintiff's  
16 arguments, the cost of defending the continuing copyright in the Disputed  
17 Copyrighted Publication exceeded the value of that publication to SMACNA.  
18 Accordingly, the only viable option not to waste its fixed organizational resources  
19 was to default, even though I felt we had a strong legal case against Plaintiff and  
20 could have counterclaimed for copyright infringement.

21 8. SMACNA has no intention of pursuing litigation against Plaintiff  
22 related to the subject matter of this litigation, which I thought was made clear by  
23

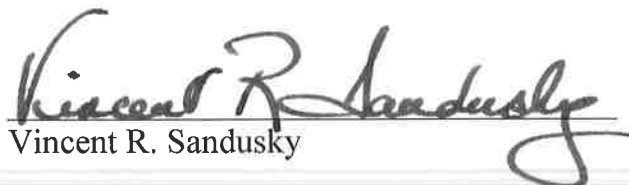
1 SMACNA's counsel informing the Plaintiff that SMACNA would not respond to  
2 the Complaint. SMACNA simply sought the lowest cost manner in which to end  
3 the litigation, especially in light of Plaintiff's apparent goal of litigating public  
4 policy change.  
5

6 9. Had Plaintiff requested a license to use the Disputed Copyrighted  
7 Material or requested a covenant not to sue from SMACNA, SMACNA would have  
8 agreed. Instead, Plaintiff unnecessarily filed a voluminous brief with the Court and  
9 now seeks to assess its attorneys' fees against SMACNA.  
10

11 10. In any event, to be absolutely clear, as an authorized agent of  
12 SMACNA, I hereby enter into a binding obligation on behalf of SMACNA that it  
13 will not pursue litigation against Plaintiff based on copyright infringement of the  
14 Disputed Copyrighted Publication. To the extent any additional legal  
15 documentation is deemed necessary by the Court or Plaintiff to effectuate this  
16 binding obligation on SMACNA, I agree to promptly execute and provide such  
17 reasonable documentation upon request.  
18  
19  
20  
21

22 I declare under penalty of perjury of the laws of the United States of America that the  
23 foregoing is true and correct.

24 Executed this 14<sup>th</sup> day of June, 2013

25   
26 Vincent R. Sandusky  
27